

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

DENNIS M. DONOVAN

Plaintiff,

v.

Civil Action No. 04-12110-MLW

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
AND POPEO, P.C., ROBERT M. GAULT,  
individually, and PETER J. MARATHAS, JR.,  
individually,

Defendants.

**ASSENTED-TO MOTION FOR DEFENDANTS TO FILE  
REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendants Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Robert M. Gault and Peter J. Marathas, Jr. (collectively the "defendants") hereby move, pursuant to Local Rule 7.1(B)(3), for leave to file the attached Reply Memorandum in Support of Defendants' Motion to Dismiss ("Reply Memorandum"). The defendants seek to file the Reply Memorandum so that, *inter alia*, they can address new allegations made by plaintiff Dennis Donovan ("Donovan") in the Amended Complaint he filed after the defendants filed their Motion to Dismiss. In support of this Motion the defendants state:

1. On October 26, 2004, the defendants filed a Motion to Dismiss the Complaint and Memorandum in Support of Defendants' Motion to Dismiss.
2. On November 4, 2004, Donovan filed an Amended Complaint under Fed. R. Civ. P. 15(a) in an attempt to remedy one of the grounds for dismissing the Complaint (lack of causation) identified by the defendants in the Motion to Dismiss. On November 5, 2004,

Donovan also filed Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss the Complaint (the "Opposition").

3. Except for the new allegations concerning causation, the Amended Complaint is substantively identical to the original Complaint. Therefore, the parties have agreed that defendants' Motion to Dismiss and Memorandum in Support of Defendants' Motion to Dismiss shall apply to, and should be considered by the Court in connection with, the Amended Complaint.

4. So that the defendants can address the new allegations in the Amended Complaint concerning causation and respond to certain arguments set forth in Donovan's Opposition, the defendants seek to file the attached Reply Memorandum. The defendants believe the Reply Memorandum will assist the Court in resolving the issues presented by the Motion to Dismiss.

5. Pursuant to Local Rule 7.1(A)(2), Donovan's counsel has been contacted about this Motion and assents to it being granted.

WHEREFORE, the defendants request permission to file the attached Reply Memorandum.

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
AND POPEO, P.C., ROBERT M. GAULT, and  
PETER J. MARATHAS, JR.,

By their attorneys,

I HEREBY CERTIFY THAT A TRUE COPY OF  
THE ABOVE DOCUMENT WAS SERVED  
UPON THE ATTORNEY OF RECORD FOR  
EACH OTHER PARTY BY MAIL/ ~~FILE~~ ON

DATE 11/19/04 SIGNATURE Kevin P. Light

Dated: November 19, 2004

Kevin P. Light  
Robert S. Frank, Jr. (BBO No. 177240)  
Kevin P. Light (BBO No. 300110)  
Paul D. Popeo (BBO No. 567727)  
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